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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM L. HUNTER,

Defendant and Appellant.

B209306

(Los Angeles County  
Super. Ct. No. LA054475)

APPEAL from a judgment of the Superior Court of Los Angeles County, Darlene Schempp, Judge. Affirmed.

William L. Hunter, in pro. per.; Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

\* \* \* \* \*

William L. Hunter appeals from a judgment of conviction after pleading no contest to a single count of driving under the influence of an alcoholic beverage and a drug, causing injury. Appellant admitted he inflicted great bodily injury upon the victim, and suffered one prior strike and serious felony conviction.<sup>1</sup> The court sentenced appellant to 12 years in state prison, consisting of the middle term of two years, doubled for the prior strike, plus three years for inflicting great bodily injury, and five years for the prior serious felony conviction.

The evidence at the preliminary hearing showed that appellant was driving at a high rate of speed on the wrong side of the street when he collided head on with a car coming in the opposite direction. The other driver was seriously injured. The accident occurred at 10:30 a.m. An investigating police officer spoke to appellant at the hospital about 1:00 p.m. At that time, appellant had a strong odor of alcohol on his breath and appeared disoriented. Appellant's eyes were red and bloodshot, his speech was slurred and he appeared to be falling asleep.

Appellant told the investigating officer he had three beers earlier in the day and had taken two Percocet pills at 7:00 that morning. He stated he then went to a methadone clinic, received treatment and drove to a store; he remembered being on his way home from the store, but he did not know what happened after that. The investigating officer conducted a horizontal gaze nystagmus (HGN) test on appellant at the hospital and found his eyes moved in a jerky motion, indicating appellant was under the influence of drugs or alcohol, and his eyes did not track the stimulus during the HGN test. The investigating officer opined from her observations that appellant was under the influence of alcohol. Appellant took a blood test.

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<sup>1</sup> The information included a second count charging appellant with driving with a blood alcohol level of 0.08 percent, causing injury, and alleged appellant had suffered two prior convictions of a serious or violent felony, served two prior prison terms and committed an offense resulting in a felony conviction within five years after serving a prison term. At the People's request, the trial court dismissed the second count and struck one prior strike.

A police department criminalist testified that the blood test indicated appellant's blood alcohol level was 0.07 percent. She testified that if appellant's blood was drawn a few minutes before 2:00 p.m., his blood alcohol content at 10:30 a.m. would have been 0.12 percent. Appellant's blood also tested positive for marijuana.

Appellant applied for, and was denied, a certificate of probable cause from the superior court. Appellant appealed from the judgment, and we appointed counsel to represent him for this appeal.

After examination of the record, appellant's appointed counsel submitted a brief on appellant's behalf raising no issues. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442, counsel requested that this court independently review the entire record on appeal for arguable issues. We advised appellant he had the right to personally submit by brief or letter any grounds of appeal contentions or argument which he wished this court to consider. Appellant responded by submitting a letter raising several issues.

Appellant complains he had difficulty in communicating with his appellate counsel, who purportedly took "no great interest" in raising additional facts with this court that appellant feels might be helpful to his appeal. The additional facts include a videotape showing appellant taking methadone on the day of the accident and the absence of methadone in the toxicology screen. Appellant also asserts the record on appeal is incomplete because the clerk's transcript shows dates "significant to [appellant's] appeal," specifically January 16 and June 27, 2008, which are not included in the reporter's transcript on appeal.

Pursuant to Penal Code section 1237.5, subdivision (a), no appeal shall be taken by a defendant from a judgment of conviction upon a plea of guilty or nolo contendere following an admission of violation except when (1) the defendant has raised "reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings" and (2) the trial court has executed and filed a certificate of probable cause. (See *People v. Marlin* (2004) 124 Cal.App.4th 559, 566-567.) Appellant pleaded no contest to the charge for which he was convicted, and he has satisfied neither requirement. under section 1237.5.

Appellant's claim that additional evidence exists is not cognizable in the present appeal, because such evidence relates to his guilt or innocence, which is not at issue here. Moreover, appellant's stated concerns about his appellate counsel are not well founded. In matters relating to strategic litigation decisions, such as the appropriate issues, if any, to be raised on appeal, appointed appellate counsel has "the exclusive right to appear and control court proceedings as long as fundamental rights are not denied." (*In re Walker* (1976) 56 Cal.App.3d 225, 228; see also Pen. Code, § 1255.) Appellant has failed to show a denial of his fundamental rights or that evidence outside the record may properly be raised in this appeal.

As to the "missing" dates in the reporter's transcript on appeal, appellant merely states that they are "significant" to his appeal without specifying in what respect those dates are "significant." The court merely continued the trial date on January 16, 2008, and the hearing of June 27, 2008, postdates the judgment and imposition of sentence. Accordingly, neither date appears to bear any significance to this appeal.

We have examined the entire record and appellant's supplemental letter. We are satisfied that appellant's counsel has fully complied with her responsibilities and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259; *People v. Wende, supra*, 25 Cal.3d at p. 441; see also *People v. Kelly* (2006) 40 Cal.4th 106, 123-124.)

#### **DISPOSITION**

The judgment is affirmed.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BIGELOW, J.